

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**PRECISE TECHNOLOGY, INC.**

**Employer**

**and**

**Case No. 8-RC-16496**

**UNITED ELECTRICAL, RADIO AND  
MACHINE WORKERS OF AMERICA**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.<sup>1</sup> I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All full-time and regular part-time employees employed by the Employer at its facility located at 610 Mondial Parkway, Streetsboro, Ohio including all production, warehouse, assistant supervisors, lead inspection, inspection, maintenance and utility employees but excluding all guards, professional employees, temporary employees and supervisors as defined by the Act.<sup>2</sup>*

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<sup>1</sup> I find that the hearing officer's rulings at the hearing are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning representation these employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. The parties have filed post-hearing briefs which I have carefully considered.

<sup>2</sup> With the exception of the assistant supervisors at issue herein, the unit is as agreed to by the parties at the hearing. The parties further stipulated at the Hearing that the following individuals are ineligible to vote: shift supervisors Darryl Adams, Tony (Fred) Biser, and John Vaught, quality manager and acting plant manager Tom Young, maintenance manager Tim Coyle, human resources and customer service manager Patricia Nichols, production manager John Steinheiser, purchasing/accounting manager

Approximately 70 employees are in the unit found to be appropriate.

### **INTRODUCTION**

The sole issue in this case is whether the Employer's assistant supervisors<sup>3</sup> meet the statutory definition of "supervisor" under the Act. The Petitioner contends that they do, the Employer disagrees.

For the reasons described more fully below, I find that the Petitioner has failed to carry its burden of proving that the assistant supervisors are supervisors as described in Section 2(11) of the Act, and I shall, therefore, include them in the unit.

### **FACTS**

The Employer manufactures the "Diaper Genie," a custom injection molded product, at its plant located in Streetsboro, Ohio. The Employer has owned the plant for approximately three years. Previously, the plant was owned and operated by a different company, although many of the employees and managers remained the same.

The Employer uses several molding machines to produce the Diaper Genie. Plastic material and color is injected into the press molds to produce the 17 plastic component parts that comprise the Diaper Genie. The Diaper Genie is assembled into a complete unit and sold to the Platex Corporation as a finished product.

The Employer's production department operates around the clock and is divided among three shifts. The first shift operates from 7:00 a.m. to 3:15 p.m. The second shift operates from 3:00 p.m. to 11:15 p.m. The third shift operates from 11:00 p.m. to 7:15 a.m.

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Nicole Stevenson and office clerical Susan Breon. Since there is no record evidence to the contrary, I shall accept the parties stipulation and find the individuals set forth above are ineligible to vote in the election.

<sup>3</sup> In the record, the assistant supervisors are also referred to as assistant foremen. In this Decision, I shall refer to these individuals as assistant supervisors.

Production manager John Steinheiser described the production department's organizational hierarchy as follows. The acting plant manager is Tom Young, who also serves as quality manager. Steinheiser, who reports directly to Young, is responsible for scheduling presses and mold changes, and overseeing the production floor. Three shift supervisors report to Steinheiser: Darryl Adams on first shift, Tony (Fred) Biser on second shift, and John Vaught on third shift. Steinheiser explained that the shift supervisors oversee the assistant supervisors, assign work to the operators and do evaluations.

Each shift supervisor has an assistant supervisor: Juan Zuniga<sup>4</sup> on first shift, Bob Loving on second shift, and Tom Sadler on third shift. Steinheiser testified that assistant supervisors have several production and maintenance responsibilities. Assistant supervisors start and stop machines, deliver materials from the warehouse to presses located on the shop floor by tow motor, and do mold changes (setting molds in the presses and removing them). Assistant supervisors may also relieve operators from their machines for a break, although this usually only happened when production was especially busy.

Assistant supervisors are also called upon in the event of a problem with a press. Third shift operator Jennifer Beckwith testified that if she has a problem with a press, she will turn on her "call" light, and either the shift supervisor or the assistant supervisor will come to help her. First shift quality inspector Dave Fairbee testified that in the event of a machine break down, he will call both the shift supervisor and the assistant supervisor and "whoever's the closest will come down to the machine and fix [it]."

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<sup>4</sup> Steinheiser explained that due to restructuring by the Employer's predecessor in 2000, Darryl Adams served as a third shift supervisor and Juan Zuniga served as "acting" first shift supervisor. Steinheiser explained that while Zuniga maintained the title of assistant supervisor, he "[engaged] in some of the functions that the other shift supervisors" performed. These placements continued until September of 2002.

The record contained testimony from several witnesses regarding the amount of time assistant supervisors spend performing production and maintenance work on a daily basis. Steinheiser estimated that approximately 95 percent of the assistant supervisors' duties are production or maintenance related. During the remaining 5 percent of their time, Steinheiser explained that assistant supervisors do the work their shift supervisor directs them to perform, such as inputting production data into the computer and reviewing time cards. Shift Supervisor Tony Biser estimated that assistant supervisors spend 93 to 97 percent of their time performing production and maintenance work. Third shift operator Jennifer Beckwith estimated that third shift assistant supervisor Tom Sadler spent only 40 to 50 percent of his time performing production work. First shift quality inspector Dave Fairbee estimated that first shift assistant supervisor Juan Zuniga spent 50 to 70 percent of his time doing production and maintenance work on days that there were molds to set. But if there were no molds to set and there is "nothing going wrong," then Fairbee estimated that Zuniga spent only 25 percent of his time on production and maintenance work and the remaining 75 percent was spent "mainly going around making sure the operators are doing their jobs." Fairbee also estimated that about 90 percent of the mold set-ups are done on first shift.

Quality control inspectors, rather than assistant supervisors, generally monitor the work performed by operators and material handlers. However, third shift operator Jennifer Beckwith testified that on occasion assistant supervisor Tom Sadler has corrected her performance when he has observed her doing something incorrectly. Second shift operator Sylvia Dinkins testified that assistant supervisor Bob Loving has done the same to her.

Production manager Steinheiser testified that there are 12 production operators on first shift, six or seven on second shift and seven on third shift. Production operators are classified as

either “A,” “B” or “C” level based upon their demonstrated production abilities. Steinheiser explained that “A” level operators perform “easier jobs” such as “running the bodies and lids and funnels and adapters and some of the smaller components.” “C” level operators perform the “harder jobs” such as running the line and assembling the product. “B” level operators perform the “middle jobs” such as putting “top cover assemblies” together.

On each shift there are also production handlers, quality inspectors and one utility person. The product handlers move products to and from presses, shelve the products and stock the floors. Quality inspector Fairbee testified that his job was to make sure that machines are producing a good product, that the operators are following the product information book and that the packaging is done properly. Fairbee stated that in his job he checks the production log sheets, makes rounds on each machine daily, and takes parts to the quality assurance lab where he uses calipers, gauges and other tools to measure them for accuracy. The utility person performs duties such as grinding scrap parts and relieving the operators for breaks.

The Employer also employs temporary staff from various staffing agencies on an as needed basis and there can be anywhere from zero to several temporary employees working on a shift. Temporary employees are trained by the operators. Quality inspector Fairbee explained that a shift supervisor has the authority to send home a temporary employee who is not working out. Fairbee noted one occasion when he observed then Assistant Supervisor Mike Whylen send home a temporary employee when the shift supervisor was absent and there were no other management officials present. Fairbee did not state when this incident occurred, however.

### **Assignment and Direction of Work**

Steinheiser testified that every day, prior to the start of a shift, the shift supervisor fills out a roster referred to as the “shift attendance sheet,” which notes employee attendance and tells

the operators where they are going to be working. The sample roster entered into the record lists all first shift production operators and their assigned task for that particular day. The roster includes a column entitled “move to.” Second shift supervisor Tony Biser explained that in the event a mold change is scheduled for a particular press, he will list a second task for the affected operator to perform during this period under the “move to” column. Either the shift supervisor or the assistant supervisor may distribute the roster. Employees may simply view the roster or they may talk to the shift supervisor or assistant supervisor directly to get their daily assignment.

The record establishes that the assistant supervisors complete the shift attendance sheet from time to time. Steinheiser testified that the assistant supervisors make the shift attendance schedule only if the shift supervisor is late arriving to work or is absent. Biser testified that he usually creates the schedule for his shift. Third shift supervisor Tom Vaught prepares the schedule about 80 percent of the time, but admitted that the assistant supervisors sometimes prepare the schedule. Biser also stated that about 60 to 70 percent of the time that he takes a vacation, he will prepare the shift attendance sheets for the dates he will be out in advance. First shift quality inspector Dave Fairbee testified that he sees first shift assistant supervisor Juan Zuniga making out the shift attendance sheet three or four times per week.

Steinheiser also testified that shift supervisors prepare a daily break schedule that tells the operators who will be relieving them for break. Operators receive two ten-minute breaks and a half-hour lunch break. Biser testified, however, that he rarely completes a written break schedule and usually the employees schedule their own breaks. Should a problem arise under that system, Biser explained the employees come to him to handle it. The record contained no testimony regarding whether the break schedule is actually prepared on a daily basis on the other shifts or whether assistant supervisors are involved in preparing the break schedule.

When asked how much independent thought goes into preparing the shift attendance and break sheet, Steinheiser stated “[n]ot a whole lot. It’s pretty repetitious. For the most part these people are self-directed. Most of them only run certain jobs and they run the same job pretty much every day.” He further explained “they move around a little bit, but within their classification. So they’re generally on, you know, maybe one, two, three jobs.” When asked who decides when to move an operator to a different task, Steinheiser stated that the shift supervisor makes that decision. Second shift supervisor Tony Biser testified that he assigns work based upon his knowledge of the operators’ abilities.

In the event of an unscheduled mold change, such as when a machine breaks down or there is a quality problem with one of the molds, Steinheiser testified that either the supervisor would tell the assistant supervisor to redirect the operator to another job, or the supervisor himself would redirect the operator. Biser corroborated that he makes the decision regarding reassigning employees in the event of an unscheduled mold change.

### **Hiring**

The Employer hires employees through a temporary staffing agency. Temporary employees are placed with the Employer for a 90-day trial period, after which the supervisor writes a performance evaluation of the temporary employee. If the shift supervisor recommends hiring the individual permanently, the supervisor so informs the staffing agency and the Employer’s human resources manager by E-mail.

A shift supervisor may decide at any point prior to the completion of the 90-day trial period that a temporary employee is “not working out,” and communicates this fact to the staffing service and the human resources manager by E-mail.

Steinheiser testified that assistant supervisors play no role in recommending whether temporary employees are hired. If a shift supervisor is on vacation, and the assistant supervisor notices an issue with a temporary employee, the assistant supervisor is expected to contact Steinheiser or the human resources manager.

### **Evaluations**

Once an employee is converted from a temporary employee to a regular employee, the employee serves an additional 90-day probationary period. The shift supervisor reviews probationary employees' performance on a monthly basis throughout this period. Again, assistant supervisors play no role in this process. Biser corroborated that he completes these evaluations by himself with no involvement from his assistant supervisor. Biser testified that, at times, his assistant has told him that a particular employee was doing a good job, but Biser did not take that information into consideration when conducting his evaluation. Biser explained that he is in a better position to evaluate employees than his assistant because the assistant is busy performing his own work, Biser may receive feedback on an employee from a variety of things sources, and he prefers his own view of the work performed.

Employees are evaluated on an annual basis. Shift supervisors complete the annual evaluations and the assistant supervisors play no role in this process. The parties stipulated on the record, however, that during the calendar year 2002, a review of the evaluations of first shift operators revealed the following: four of the evaluations were completed by Darryl Adams, two were completed by Juan Zuniga, and six were completed by Adams and Zuniga jointly. The evaluations signed solely by Zuniga were completed while he functioned as acting shift supervisor. The evaluations completed by Adams and Zuniga together were due to Adams



having Zuniga provide input on the evaluations because, at that point, Zuniga was more familiar with the employees.

The parties further stipulated that evaluations are not tied to wage increases but are made a part of employees' personnel files. Steinheiser explained that the purpose of the evaluations is to let employees know how they are doing and where they need to improve. He further testified that annual evaluations may be used in making promotional decisions but he did not provide any example of that having ever occurred.

### **Discipline**

The Employer has a progressive disciplinary policy that includes a verbal warning, which is then reduced to writing, written warning, suspension and discharge. An employee may receive more than one verbal warning before the discipline is taken to the next progressive step. The shift supervisor and the human resources manager make this decision together. Steinheiser also stated that a shift supervisor may send an employee home for the remainder of a work-day, for instance, in the event of a fight, but Steinheiser provided no instances of this occurring.

Assistant supervisors have limited authority to issue a verbal warning in the event their shift supervisor is absent or on vacation. Steinheiser explained the purpose of a verbal warning is to document the incident should the behavior reoccur. Employees are not required to sign a verbal warning. Assistant supervisors do not have the authority to issue discipline any more serious than verbal warnings. If they become aware of a disciplinary situation, they are to inform their shift supervisor. If the shift supervisor is absent or on vacation, the assistant supervisor is to contact production manager Steinheiser or another manager or inform the shift supervisor once he returns. Assistant supervisors may complete the paperwork for a verbal or written warning if so directed by a shift supervisor, which the shift supervisor will thereafter review.

After verbal and written warnings are issued, they are forwarded to the human resources manager and kept in the personnel files.

The record establishes that assistant supervisors were involved in several incidents of discipline. Second shift assistant supervisor Bob Loving issued a written warning in September 2002. The written report reflects that the discipline was issued as a result of an employee failing to punch the time clock, and that a verbal warning had been issued to the employee in September, 2001. There was no signature of a witness or any other supervisor or manager on the report. When Steinheiser was asked about the incident, he stated that he did not have any personal knowledge of the situation.

Second shift supervisor Tony Biser testified that he was absent the day Loving issued the warning in issue. Biser explained that he had previously discussed with Loving an employee's recurrent problem with punching the time clock, and Biser had told Loving "the next time this happens that we need to do a written warning." Upon Biser's return to work, Loving informed Biser that he had issued the written warning. Biser told Loving that it was improper for Loving to have signed and issued the written discipline by himself and Biser told him never to do it again. Loving explained in his defense that he felt that he was simply doing what Biser had told him to do. Biser further testified that he did not seek to have the discipline withdrawn because the discipline was deserved.

Second shift operator Sylvia Dinkins testified that approximately one year ago, Bob Loving took her into the supervisor's office. He showed her a verbal warning he had prepared for failing to wear her safety glasses. Then he ripped up the disciplinary report and told her that if she ever did it again then she would get a written warning and it would go in her file. Dinkins could not recall whether Biser was present at work that day. Also, about six to seven months

ago, Dinkins switched positions on the line with employee Camden Lee without seeking permission from Biser or Loving. Biser and Loving met with her and Lee in the supervisor's office. Biser and Loving both told Lee and Dinkins they were not allowed to switch positions on the line without permission and not to do it again.

First shift quality inspector Dave Fairbee testified that about three years ago, he had an incident with assistant supervisor Vesper Greg where Fairbee disagreed with Greg and spoke to Greg in an insubordinate manner. Fairbee met with Greg and quality manager Tom Young, Fairbee's immediate supervisor and received a verbal warning, which all three signed.

In December 2002, third shift assistant supervisor Tom Sadler told Fairbee to put his safety glasses on. Later, when Fairbee saw Sadler standing in front of the supervisor's office with a temporary employee who was not wearing safety glasses, Fairbee said "you better get your safety glasses on before he writes you up." Later that morning after Fairbee's supervisor Tom Young came in, Fairbee was called into a meeting with shift supervisor John Vaught, Tom Sadler and Tom Young. Young told Fairbee that he was getting a verbal warning for not having his safety glasses on and because of his attitude toward Sadler. Fairbee testified that Sadler filled out and signed the disciplinary report. Quality manager Tom Young testified that he was the one who actually decided to discipline Fairbee and that Sadler merely wrote up the report. Young explained that shift supervisor Tom Vaught recommended disciplining Fairbee but that Sadler made no recommendation.

Fairbee also testified that Juan Zuniga disciplined Operator Judy Sadler in December of 2002. During the plant Christmas party Sadler went up to Fairbee and called him "a f---in' idiot for wanting the Union in" and she threw a plate of food at him. Assistant Supervisor Zuniga and five other individuals were present when this occurred. According to Fairbee, Zuniga stated he

would have to “write her up” for that conduct. However, Fairbee stated that he did not know whether any other supervisors were involved in making the decision to discipline Sadler. Human Resources Manager Patricia Nichols testified that she spoke to Darryl Adams about the write up. According to Nichols, Adams spoke to Judy Sadler about the incident and directed Zuniga to issue a written warning to Sadler.

Regarding discipline for attendance policy violations, the parties stipulated that those disciplinary matters were determined solely by the human resources manager. The parties further stipulated that while shift supervisors or assistant supervisors may have signed attendance violation forms in the past, their involvement was limited to merely handing the form to the employee.

#### **Promotion, Layoff and Recall**

Steinheiser testified that neither shift supervisors nor assistant supervisors play any role in the promotion, layoff or recall of employees.

#### **Vacation Approval**

The parties stipulated that the human resources manager approves all vacation requests, occasionally in consultation with the production manager. Neither shift supervisors nor assistant supervisors have any role in granting vacation requests.

#### **Time Card Reports**

The parties entered into the following stipulations regarding time card reports. Time card reports are bi-weekly records of hours worked. During the past two months, the “vast majority” of time card reports were initialed by shift supervisors but “some” were initialed by assistant supervisor Bob Loving. Any discrepancies and adjustments are discussed between the human

resource manager and the shift supervisor. Assistant supervisors are never involved in such discussions.

### **Wages and Benefits**

Assistant supervisors are paid on an hourly basis, punch a time clock and are paid overtime the same as production employees. Assistant supervisors earn between \$12.25 per hour and \$15.00 per hour. The quality lead inspector and the maintenance employee whom the parties agree should be included in the bargaining unit earn a higher hourly wage than assistant supervisors. The starting wage for Operators is in the 7.00 to 8.00 per hour range. Shift supervisors are salaried and do not punch a time clock.

Assistant supervisors are covered under the employee handbook while shift supervisors are not. Assistant supervisors receive the same benefits as the production employees. The record was silent regarding whether the benefits of assistant supervisors and production employees differed in any way from those of the shift supervisors and higher management.

### **Other Secondary Indicia**

The Employer provides shift supervisors with a master key that unlocks all the doors in the Employer's facility. The Employer does not give assistant supervisors a master key but does provide them with the key to the employee entrance door, which operators and other production employees are not given.

The Employer provides company E-mail accounts to its managers and the shift supervisors. Assistant supervisors and other production employees are not given E-mail accounts.

During the Employer's training on sexual harassment last year, Steinheiser explained that the Employer separated its staff into two groups. Supervisors and managers were in one training

session, to receive training on “[l]ooking at things through managers’ eyes.” Assistant supervisors and the rest of the plant were in another training session to “look[] at things through an hourly person’s eyes.”

### **ANALYSIS**

Contrary to the Employer, the Petitioner contends that assistant supervisors are statutory supervisors under the Act. For the reasons explained more fully below, I find that the Petitioner has failed to carry its burden of proving that the assistant supervisors are statutory supervisors under the Act, and I therefore include them in the unit.

Section 2(3) of the Act excludes from the definition of “employee” any individual employed as a supervisor. Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet this definition, an individual need only possess the authority to perform any one of the indicia listed, provided that the authority is exercised using independent judgment on behalf of management and not in a routine manner. **Clark Machine Corp., 308 NLRB 555 (1992); Browne of Houston, Inc., 280 NLRB 1222, 1223 (1986).** Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. See, e.g., **Energy Systems & Service, 328 NLRB No. 125 (1999).** The burden of proving supervisory status rests on the party asserting the status. **NLRB v. Kentucky River Community Care, Inc., 121 S. Ct. 1861, 1866-1867 (2001); Bennett Industries, Inc., 313 NLRB 1363 (1994).**

The Board has noted that the legislative history of Section 2(11) indicates that Congress intended to distinguish between employees who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management, from those supervisors truly vested with genuine management prerogatives. **George C. Foss Co., 270 NLRN 232, 234 (1984)**. The Board has further explained that “[i]n enacting Section 2(11) Congress emphasized its intention that only truly supervisory personnel . . . should be considered supervisors and not ‘straw bosses, lead men, set-up men, and other minor supervisory employees.’” **Chicago Metallic Corp., 273 NLRB 1677, 1688-1689 (1985), enfd. In relevant part 794 F.2d 527 (9<sup>th</sup> Cir. 1986)**.

The Board has noted its duty not to construe the statutory language of Section 2(11) too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. **Hydro Conduit Corp., 254 NLRB 433, 437 (1981); St. Francis Medical Center-West, 323 NLRB 1046 (1997)**.

In analyzing the supervisory status of the assistant supervisors, I have carefully considered the assistant supervisors’ authority with respect to assignment of work and discipline. The record contained no evidence that the assistant supervisors hire, suspend, lay off, recall, promote, discharge, reward, or adjust grievances of other employees, nor do they effectively recommend such action. I find, therefore, that assistant supervisors do not possess such authority.

#### **Assignment and Direction of Work**

The record demonstrates that while shift supervisors have the primary responsibility for preparing the shift attendance sheet and break schedule for operators, the assistant supervisors assume these duties from time to time. It is unclear from the record exactly how often this

occurs. It is apparent, however, that the assistant supervisors prepare the schedules at least occasionally and not merely in their shift supervisor's absence. I find, however, that regardless of the frequency, the duty of preparing the job assignment and break schedule does not involve the use of independent judgment.

The Employer classifies the operators according to their ability to perform production tasks. The operators are classified as "A," "B" or "C" level based upon their skills and abilities. Each classification of operator performs only a limited number of tasks. There was no testimony to suggest that operators ever perform work outside of their classification. The work the operators perform is repetitive and the operators do not appear to require constant direct supervision.

The record establishes that the decision making process involved in making job assignment jobs requires consideration of the identity and shells of the operators working a particular day and the production needs of the Employer. Shift supervisor Biser testified that he also considers employees' preferences in making assignments.

In Kentucky River, *supra*, the Supreme Court ruled that the Board may not exclude from the independent judgment required in Section 2(11) the professional or technical judgment used in directing less-skilled employees to deliver services. The Court recognized, however, that it is within the Board's provisions to determine what scope or degree of discretion meets the statutory requirement of "independent judgment" The Court stated, "[m]any nominally supervisory functions may be performed without the exercis[e of] such a degree of...judgment or discretion...as would warrant a finding of supervisory status under the Act." *Id.*, citing Weyerhaeuser Timber Co., 85 NLRB 1170, 1173 (1949). The Court also agreed with the Board that if the Employer limits the degree of independent judgment by, for example, detailed orders,



an individual acting under such orders may be found not to be a statutory supervisor. **Kentucky River** at 167, citing **Chevron Shipping Co.**, 317 NLRB 379, 381 (1995).

I have considered the facts of this case in light of the Supreme Court's decision in **Kentucky River**, and have concluded that there is insufficient evidence of independent judgment in the assignment of work to warrant a supervisory finding.

The Board has consistently found that making job assignments based upon employees skills and abilities and production needs does not involve the use of independent judgment. In finding that press supervisors' authority to control the work assignments of their crew did not involve the use of independent judgment in **North Shore Weeklies, Inc.**, 317 NLRB 1128, 1130 (1995) the Board noted that the press supervisors made work assignments based upon selecting the employee best capable of performing a certain task or based on the need to separate two talkative employees. The Board found that such decisions "indicate no more than the press supervisors need only exercise routine judgement based upon experience or ordinary craft skills." The Board also found significant the fact that work assignments did not result in any difference in employee pay. **Id.**

In **MJ Metal Products, Inc.**, 325 NLRB 240 (1997) the Board similarly found that the assignments of employees to various machines and tasks based solely on the training and skill level of the employee along with production needs did not involve the use of independent judgment. In that case, the individuals whose supervisory status was at issue assessed the scheduled production at the start of the shift and assigned employees to machines or tasks at the start of the shift and after lunch break. In **S.D.I. Operating Partners, L.P.**, 321 NLRB 1111 (1996) the Board also noted the fact that a leadman "directs employees to perform various necessary tasks according to the skills they have previously demonstrated" involves "no real

managerial discretion that would require the use of independent judgment.” In **Vanport Sand and Gravel, Inc.**, 267 NLRB 150 (1983), the Board held that job assignments based on an employee’s skills and the production needs of the plant did not involve the use of independent judgment.

Similarly, in **Milliard Refrigerated Services, Inc.**, 326 NLRB 1437 (1998) the Board held that the fact that leaders assign crew employees to various tasks and may rotate the employees between different jobs and different crews does not by itself establish the responsibility to direct employees. The Board reasoned that these employees “are experienced employees who know which of their fellow employees have the greater skill and experience. Their use of this information when assigning service work does not establish that they exercise independent judgment.” **Id.** at 1438.

In the instant case, the assistant supervisors’ role in observing the work of operators and correcting the work as necessary is also insufficient to establish supervisory status. In **PECO Energy Co.**, 322 NLRB 1074, 1082 (1997) the Board found that “although lead maintenance technicians are responsible for checking the work of their team members and instructing them to redo it if necessary, these directions are merely a product of the lead maintenance technician’s greater skill and experience and do not establish supervisory status. See also **Cobra Gunskin**, 267 NLRB 264, 267 (1983) in which the Board noted that “the authority of inspectors who are primarily responsible for the quality of a product to halt production and have employees make up the effective work...does not require the conclusion that they are supervisors within the meaning of the Act.”

I find, therefore, that the record fails to establish that the authority assistant supervisors exercise with respect to assignment and direction of work involves the use of independent judgment.

### **Discipline**

The record established that the Employer has vested its assistant supervisors with only limited authority to issue a verbal warning in the event their shift supervisor is absent. Beyond that, assistant supervisors possess no other authority to independently issue discipline. The Employer admitted that assistant supervisors may, nevertheless, serve a “clerical function” in preparing a written disciplinary report, signing a report, and issuing the report to an employee under a shift supervisor’s direction.

Assuming, *arguendo*, that verbal warnings in the instant case rise to the level of discipline, Board law is clear that possession of supervisory authority on an isolated basis, such as in the absence of one’s superior, does not warrant a finding of supervisory status.

The Board has held that, where intermittent supervision of unit employees is involved, such as during the absence of one’s superior, the test is whether the part-time supervisors spent a “regular and substantial” portion of their time performing supervisory duties, or whether such substitution is sporadic and insignificant. **Carlisle Engineered Products, Inc., 330 NLRB 1359 (2000)**, and **Aladdin Hotel, 270 NLRB 838 (1984)**. In the instant case, since assistant supervisors substitute for shift supervisors only in the event of vacation or other absence, such substitution can only be considered sporadic. See **Brown & Root, Inc., 314 NLRB 19, 20-21 (1994)**.

The testimony from employee Sylvia Dinkins that Loving showed her a verbal warning he prepared she failed to wear her safety glasses is also insufficient to establish supervisory

status. Dinkins could not recall whether shift supervisor Tony Biser was present at work that day or not. Moreover, since Loving ripped up the disciplinary report and only used the incident to serve as a warning, the incident did not involve the imposition of discipline.

While first shift assistant supervisor Juan Zuniga's service as "acting" first shift supervisor for almost three years until September of 2002 cannot be considered insignificant, it nevertheless also fails to establish that Zuniga is a statutory supervisor. The Board considered a similar factual situation in **St. Francis Medical Center-West, 323 NLRB 1046 (1997)**. In that case, the Board found that substitution for five of the ten months that preceded the election was not regular because it was caused by extraordinary circumstances and was not likely to reoccur. On that basis, the Board held that the individual in question was not a supervisor. For the same reasons, I find that Zuniga is not a statutory supervisor in this case.

With respect to Fairbee's testimony regarding the issuance of a warning to him three years ago, both assistant supervisor Vesper Greg and Fairbee's immediate supervisor, Tom Young, signed his disciplinary report. Young was the quality manager at the time and the parties stipulated that this position is a statutory supervisor.

The other record evidence of assistant supervisors' involvement in discipline was dismissed by testimony that individuals whom the parties stipulated to be statutory supervisors actually decided to issue the discipline. Fairbee's discipline in December of 2002 for failing to wear his safety glasses involved Young and shift supervisor John Vaught in addition to assistant supervisor Tom Sadler. Young testified that he directed Sadler to write the disciplinary report over the incident and explained that Sadler did not make any recommendation: Fairbee's testimony that Juan Zuniga disciplined operator Judy Sadler in December of 2002 was rebutted by human resources manager Patricia Nichols. Nichols testified that she discussed the discipline

with shift supervisor Darryl Adams, who explained that he spoke to Sadler about the matter and then directed Zuniga to issue a warning.

In support of its contention that assistant supervisors are statutory supervisors based upon their involvement in employee discipline, the Petitioner cites **Wallace International de Puerto Rico, Inc., 328 NLRB 29 (1999)** for the proposition that an individual who participated in disciplinary meetings involving employees and prepared disciplinary reports is a supervisor under the Act, even though the plant manager “signed off” on the disciplinary actions. I do not find **Wallace** determinative for several reasons. In **Wallace**, the individual served as the Employer’s human resources director until approximately one year prior to the time when her supervisory status was at issue. After she was relieved as human resources director she was not replaced by anyone and she still held the titles of “health and occupational safety manager” as well as “chief of security.” Additionally, even after she was no longer the human resources director, she issued “various memoranda to employees informing them about disciplinary procedures and the rules of the company and advising employees that violations to said rules entail disciplinary measures.” **Id. at 36.** Under these circumstances, the record established that she continued to be a 2(11) supervisor.

I find, therefore, that the record fails to establish that assistant supervisors possess the authority to discipline or effectively recommend discipline employees.

### **Secondary Indicia**

In the absence of any primary indicia of supervisory authority, secondary indicia cannot alone establish statutory supervisory status. **General Security Services Corp., 326 NLRB 312 (1998); St. Francis Medical Center – West, 323 NLRB 1046, 1047 (1997).** Therefore, having

found that the assistant supervisors possess no primary indicia of supervisory status, I need not consider the evidence presented that they possess secondary indicia of supervisory status.

### **CONCLUSION**

For all the foregoing reasons, I find that Petitioner has failed to meet its burden of proving that assistant supervisors are supervisors according to the definition set forth in Section 2(11) of the Act, and I therefore include them in the unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to

be represented for collective bargaining purposes by **UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by March 24, 2003.

Dated at Cleveland, Ohio this 10th day of March, 2003.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

460-7550-8700